

11 USC § 522(f-h)  
ORS 23.240(6)

In re Panaretos Case No 393-37203-dds7

Panaretos v. Creditors Protective Assn Adv No 94-3183-dds

9/23/94

DDS

unpublished

The debtor filed a preference complaint in an attempt to avoid a lien against his home pursuant to § 522(g) and (h). The court held that the debtor lacked standing to bring the action because the debtor could only avoid the transfer to the extent he could have exempted the property if the property had not been transferred.

Since the debtor's Oregon homestead exemption was not impaired under the Court of Appeals definition of impaired, the debtor already had the full exemption to which he was entitled. The debtor could not use § 522(g) and (h) to do what he was prevented from doing under § 522(f).

NOTE: THIS CASE IS PROBABLY NOT APPLICABLE TO CASES FILED AFTER THE DATE THE 1994 AMENDMENTS WENT INTO EFFECT DUE TO THE CHANGE IN THE DEFINITION OF IMPAIRMENT UNDER § 522(f).

U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
FILED

SEP 23 1994

TERENCE H. DUNN, CLERK  
BY WJ DEPUTY

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case No.  
BASIL N. PANARETOS, JR., ) 393-37203-dds7  
Debtor, ) Adversary Proceeding No.  
BASIL N. PANARETOS, JR., ) 94-3183-dds  
Plaintiff, ) MEMORANDUM DENYING  
v. ) PLAINTIFF'S MOTION FOR  
CREDITORS PROTECTIVE ) SUMMARY JUDGMENT OR  
ASSOCIATION, INC., ) PARTIAL SUMMARY JUDGMENT  
HOUSEHOLD BANK, N.A., and )  
SEATTLE FIRST NATIONAL BANK, )  
Defendants. )

Plaintiff, the debtor, lacks standing to bring a preference action under 11 U.S.C. § 522(h) to avoid a judgment lien where such avoidance is not necessary to fund the exemption or where the judgment lien does not impair the exemption.

The debtor's authority to bring a preference action where the trustee declines to do so, is limited by Section

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1 522(g) "to the extent that the debtor could have exempted  
2 such property . . . if such property had not been transferred  
3 . . . " Under the quoted language the debtor's authority to  
4 avoid a transfer is no broader than his need to do so in  
5 order to secure his exemption . Stated another way, the  
6 language precludes the debtor from using Section (h) of  
7 11 U.S.C. § 522 to do what he could not do under Section (f)  
8 of the same statute, or to use (h), a general provision, to  
9 override (g), a specific.

10 Oregon law fully protects the debtor's right to  
11 realize the full value of his exemption despite the existence  
12 of a judgment lien. As a consequence, the debtor may not  
13 avoid the lien under Section 523(g) and (h). In City  
14 National Bank v Chabot, (In re Chabot), 992 F.2d 981 (9th  
15 Cir. 1993), the Court of Appeals held that a judgment lien  
16 which has no impact on the debtor's ultimate ability to  
17 recover the full amount of the debtor's exemption does not  
18 impair the exemption. The fact that the lien might impair a  
19 debtor's ability to enjoy future growth in equity which  
20 exceeds the exemption amount does not constitute impairment.  
21 The liens in this case have no impact on the debtor's ability  
22 to realize the full amount of his homestead exemption. That  
23 is because, under Oregon law, a judgment creditor cannot  
24 cause an execution sale unless the sale will net the debtor  
25 the full amount of his exemption. O.R.S. 23.240(6). If  
26 there is sufficient value to support an execution sale, the

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1 levying officer must first pay the debtor the full amount of  
2 his exemption before turning over any funds to the executing  
3 creditor. See also, In re Crosby, No. 394-30314-dds7, slip  
4 op. (Bankr. D. Or. May 4, 1994) (Sullivan, B.J.)

5 A separate order should enter.

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8 DONAL D. SULLIVAN  
Bankruptcy Judge

9 cc: Daniel Hoarfrost  
10 Marilyn Podemski  
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